# In The Supreme Court of The United States

IN THE MATTER OF THE ESTATE OF MARY L. JOHNSON, Deceased.

LUCENA ELIZABETH CLARK JOHNSON,

*Petitioner,*

vs.

PORTLAND TRUST AND SAVINGS BANK,

*Respondent.*

Docket No. .....

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

LUCENA ELIZABETH CLARK JOHNSON,
Petitioner Pro Se

Address of Petitioner:

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Petitioner hereby prays that a writ of certiorari issue to review the judgment of the Supreme Court of the state of Washington entered in the above entitled case on September 27, 1951.

### Opinion Below

The Per Curiam opinion of the Supreme Court of the State of Washington is reported in 139 Wash. Dec. 383, and is hereafter set forth:

"PER CURIAM.—Lucena E. C. Johnson, a daughter of Mary L. Johnson, deceased, appealed from an order overruling her objections to the final account and petition for distribution filed by the executor of her mother's estate.

"Miss Johnson appeared in the superior court and in this court pro se. In the superior court, she was offered additional time to prepare her case and to secure counsel but did not avail herself of the offer. On the first page of her brief, she says:

> " 'I hope, that with an instrument herein tendered that the Court may see fit to have the record in full of the lower court sent up and see if it can find in it, with the papers sent to the court by the appellant the proof needed to be found sufficient to overrule the lower court and vacate its order, and have it rule so as to protect the interest of appellant in the whole of said land until such time as the due process of law can run its course to proceed against the malversation of appellant's father's estate.'

"This court cannot accept the invitation to see if it can find the proof needed to overrule the lower court. Appellants must make their own records here.

"There is nothing in the record before us which supports any material objection to the executor's final account and petition for distribution, and the order appealed from is affirmed."

## Jurisdiction

The jurisdiction of this court is invoked under 28 USC 1257 (3). As above stated, the judgment of the Supreme Court of the State of Washington was entered herein on September 27, 1951. Petition for rehearing in said court was denied on November 2, 1951. The judgment of the

Supreme Court of the State of Washington has become final as against this petitioner and she has no further recourse in said courts. Order extending time for filing this petition in this court has heretofore been entered herein by one of the Justices.

## Question Raised In State Courts

In her objections to the final account, report and petition for distribution, which included an accounting of a trust estate being administered in the state of Oregon by the respondent, Portland Trust and Savings Bank, this petitioner, an Oregon resident, in the Superior Court of the State of Washington for Clark County, and later in the Supreme Court of said state, raised the objection that the Washington state courts had no jurisdiction to proceed further or at all in the cause because the deceased, Mary L. Johnson, was a resident of the state of California at the time of her death and because she owned and held no property, real or personal, in the state of Washington at the time of her death. Petitioner raised such objections in open court in the said Superior Court for Clark County and in her written objections to the final account, report and petition for distribution, and such objections are contained within the record in this case. (See pages 10 through 18 of Statement of Facts and excerpts from pages 37, 38, 41, 44, 48, 49 and 53 of the Transcript on Appeal—page numbers being designated in the record when presented to the clerk of the Supreme Court of the state of Washington. Petitioner raised the question of jurisdiction in her brief to the

Supreme Court of the State of Washington, which court did not consider the question, but merely disposed of the appeal by stating, "This court cannot accept the invitation to see if it can find the proof needed to overrule the lower court. Appellants must make their own records here." (See opinion set forth above.)

The assumption of jurisdiction by the Superior Court of the State of Washington over probate proceedings wherein no jurisdiction in fact existed and wherein this petitioner, despite diligent effort, could not obtain counsel to represent her and protect her interests and the affirmance of the judgment by the Supreme Court of the State of Washington has all resulted in this petitioner, a resident of the state of Oregon, being deprived of her property by the Washington courts without due process of law and in violation of Section 1 of Amendment 14 of the Constitution of the United States.

## Question Presented

Should the Superior Court of the State of Washington for Clark County have proceeded with probate of the will of Mary L. Johnson, deceased, she being at the time of her death a resident of the state of California, and with entry of order approving final account and report of Portland Trust and Savings Bank, a non-resident executor, with such final account containing a purported accounting by said Portland Trust and Savings Bank of trust proceeds and assets belonging to the deceased and being theretofore ad-

ministered by it in the state of Oregon, when there was no actual affirmative showing that the said deceased owned any real or personal property in the State of Washington. A certified copy of the order of the Superior Court for Clark County has been filed with the clerk of this court as a part of the record in this case. The same appears at pages 62-68 of the Transcript on Appeal (page numbers being designated in the record when presented to the clerk of the Supreme Court of the State of Washington).

## Statute Involved

The only statute involved is that of the State of Washington authorizing probate of the will of a non-resident.

> "Wills shall be proved and letters testamentary or of administration shall be granted: *** (2) in the county in which he may have died, or in which any part of his estate may be, he not being a resident of the state. (3) In the county in which any part of the estate may be, he having died out of the state, and not having been a resident thereof at the time of his death." Sec. 6, Chap. 156, Laws 1917, (Sec. 11.16.050 Revised Code of Washington).

## Statement

On February 9, 1951, the Superior Court of the State of Washington for Clark County, in probate proceedings, entered its order approving final account, report and petition for distribution in the matter of the Estate of Mary L. Johnson, deceased. Petitioner, unable to secure counsel and acting pro se, both orally and by filed written objections, resisted the court's action and the entry of said order on

the specific grounds that the Washington court did not have jurisdiction to conduct the probate proceedings.

Mary L. Johnson, deceased, was the mother of your petitioner. She died on June 18, 1945, in the state of California, being at the time of her death a resident of said state.

The Portland Trust and Savings Bank, an Oregon corporation, respondent herein, named as executor under a purported will of said Mary L. Johnson, deceased, caused said will to be probated in the Superior Court of the State of Washington for Clark County upon the representation that the deceased, Mary L. Johnson, was the owner of a 25/90 interest in a gravel pit in Clark County, Washington.

In the aforesaid probate proceedings the Portland Trust and Savings Bank was permitted by the said court to make a purported accounting for monies and property formerly held by it as trustee in Oregon for Mary L. Johnson during her lifetime.

In truth and fact, Mary L. Johnson owned no real or personal property in Clark County, Washington at the time of her death and since she was not a resident of the state of Washington at the time of her death, the Washington court could not rightfully entertain probate proceedings of her estate or approve any accounting of a trust or for trust proceeds being administered by the Portland Trust and Savings Bank in Oregon.

Despite the petitioner's inadequate representation of

herself at the time of the hearing in the Superior Court for Clark County, Washington, upon the final account, report and petition for distribution and later in the Supreme Court of the State of Washington, she did point out several times that the Washington Court did not have jurisdiction over any of the matters before it. Her objections will be found in particular at pages 1 through 18 of the Statement of Facts, pages 37, 38, 41, 43, 48, 49 and 53 of the Transcript—records of the Clerk of the Supreme Court of the State of Washington, such records now being duly certified and filed with this petition in the office of the clerk of this Supreme Court of the United States.

Petitioner exhibited to the Clark County Superior Court and filed therein a decree of mortgage foreclosure and order confirming sheriff's sale, formerly entered in Cause No. 17849 in said court, whereunder such decree and order confirming sale the very real property listed in the Mary L. Johnson estate as being the 25/90 interest in Washington to give that court jurisdiction was actually acquired and owned outright by the Portland Trust and Savings Bank, free of any trust or outstanding interests. Certified copy of such decree, order and death certificate hereinafter mentioned has been forwarded as part of the record to the clerk of this court.

Petitioner also filed in said court as an exhibit attached to her objections to the final report and account a certified copy of the death certificate of Mary L. Johnson showing

the place of death as Crestview Lodge, Sierre Madre, California.

It is unfortunate that petitioner was ignorant of court procedure and presentation of evidence, otherwise she might have progressed more orderly in making her showing that the Washington Court did not have jurisdiction. Nevertheless, although the above mentioned instruments were not placed in evidence, they were before and within the judicial knowledge of the court sufficiently to put it on notice not to proceed.

Petitioner seasonably appealed to the Supreme Court of the State of Washington, which resulted in its opinion as above set forth herein under the heading *"Opinion Below."* That court's statement—"This court cannot accept the invitation to see if it can find the proof needed to overrule the lower court. Appellants must make their own records here"—is clearly indicative that petitioner has, in fact, had no judicial review of the lower court's improper assertion of jurisdiction in this case.

There are two well recognized prerequisites to the jurisdiction of a court sitting in probate to administer the affairs of a deceased person. The first is death of the person whose affairs are to be handled. The second is an alternative. The person must at the time of death reside within the jurisdiction of the court or leave property therein upon which administration may be had. *In re Yarbrough's Estate,* 126 Wash. 85, 216 Pac. 889; *State ex rel Brisbin v.*

*Frater*, 1 Wn. (2d) 13, 95 P. (2d) 27; *Stern v. Sill*, 39 Wash. 557, 81 Pac. 1007; *State ex rel Neal v. Kauffman*, 86 Wash. 172, 149 Pac. 656. Such is the stated rule of law of the Washington Supreme Court in general accord with many other authorities. In this case, however, that court disregarded the law, even though the record showed that one of the jurisdictional prerequisites was missing—namely, that the non-resident deceased leave property within the jurisdiction of the Washington court.

Proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law. *Pennoyer v. Neff*, 95 US 733, 24 L. Ed. 565; *Scott v. McNeal*, 154 US 46, 38 L. Ed. 896; *Cunnis v. Reeding School District*, 198 US 458, 49 L. Ed. 1125.

This petitioner was unable to secure counsel to represent her at the hearing upon the final report and told the court so, then she filed her objections and explained them as best she could. Under such circumstances, particularly where a question as to the court's jurisdiction had been raised, a special duty devolved upon the court to ascertain conclusively whether or not it had jurisdiction to proceed.

When petitioner appealed to the Supreme Court of the state and asked for relief, it was a denial of due process for the court to treat the case as though prepared by an attorney and disregard the appeal when errors were not raised and pointed out in proper form. Courts should con-

sider the substances of things and not be controlled by mere matters of form or technical procedure. *Haynes v. State*, 71 Fla. 585, 72 So. 180. Questions of due process are not to be treated narrowly or pedantically in slavery to forms or phrases. *American Toll Bridge Co. v. Railroad Commission*, 307 U.S. 486, 83 L. Ed. 1414; *Pearson v. McGraw*, 308 U.S. 313, 84 L. Ed. 293.

The improper assumption of jurisdiction in this case by the lower Washington State court and its proceeding with and approval of an accounting of and for trust assets theretofore being administered by the Portland Trust and Savings Bank in the state of Oregon, such accounting being totally without notice to this petitioner, all has effectively deprived her of her rights as a resident of the state of Oregon. She has never been afforded any opportunity of producing evidence which would otherwise have been available to her in Oregon as to the trust properties and assets of the deceased in Oregon, which assets were substantially in excess of those accounted for in the Washington court proceedings in question.

In any action which might be commenced by this petitioner in Oregon against respondent Portland Trust and Savings Bank, the finality of the judgment of the Washington court will doubtless be asserted as and held to be a complete bar as against your petitioner.

## Conclusion

It is respectfully urged that the fundamental rights of your petitioner have been violated as aforesaid by the Washington state courts and to afford her the protection guaranteed by Sec. 1 of Amendment 14 of the Constitution of the United States, certiorari should now issue as herein prayed to the end result that upon review by this court the judgment of the Supreme Court of the State of Washington affirming the order of the lower court be ultimately reversed.

*Respectfully Submitted,*

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*Respondent.*

Docket No. 605

## ANSWER TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI


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## ANSWER TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

### STATEMENT

The will of Mary L. Johnson, deceased, was filed in the Superior Court of Clark County, Washington, by respondent, named in the will as executor, together with a verified petition for probate of the will.

The petition alleged deceased, at time of her death, was a resident of California, but left real property in Clark County, Washington. The petition also alleged respondent's corporate existence in the State of Oregon and its qualification to act as trustee in the State of Washington.

Proof of the will was regularly made and also proof of the petition, resulting in the signing of an

order admitting the will to probate, finding the respondent was named as executor and had qualified itself to act as trustee in the State of Washington.

The court also directed that the appointment under the will be confirmed and that upon respondent filing a bond, its oath and naming a statutory agent, that letters testamentary be issued and that it proceed to administer the estate.

Qualification under the order was completed, and on May 28, 1948, letters testamentary were issued. All of these facts are shown by the supplemental transcript filed by respondent.

Notice to creditors was published. Petition for sale of the 25/90ths undivided interest in described real estate in Clark County, Washington, belonging to deceased was prayed for. An order directing the sale was made, and after notices were given sale of the real estate was made. Return of the sale was filed and an order confirming the sale was made and entered October 28, 1948.

A final account and petition for distribution dated November 6, 1950, was filed, which petition set forth that the petitioner, Lucena Elizabeth Clark Johnson, a daughter of the deceased, was one of the distributees.

The order of the court set the date of hearing on

the final account for December 29, 1950, at 1:30 o'clock, directing the giving of notices, which was done both by publication and by posting. All of these facts are also shown by the supplemental transcript.

On the day of the hearing, December 29, 1950, Lucena Elizabeth Clark Johnson filed her first of several unverified objections to the final account and petition for distribution, and on that day appeared personally in open court, and the hearing was postponed at her request to a later date. Later, on January 30, 1951, a hearing was had, petitioner appearing again in person, and evidence was taken as shown by the Statement of Facts filed by the petitioner.

On February 9, 1951, after notice, petitioner again appeared in court, at which time the court signed the order approving the final account and decree of distribution. From this order petitioner appealed to the Supreme Court of the State of Washington. Petitioner's transcript shows the disposition of the appeal.

Petition of certiorari seeks to review the proceeding of the Supreme Court of the State of Washington on two specific grounds:

First—There was no personal service upon petitioner.

Second—That the Superior Court of Clark County, Washington, had no jurisdiction.

**References to Washington Statutes and Decisions**

The following sections of the Washington code apply:

Section 1376, Rem. Rev. Stat. of Washington, which provides:

> "Wills shall be proved and letters testamentary or of administration shall be granted: * * *(3) in the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death."

Section 1530, Rem. Rev. Stat. of Washington, which provides:

> "It shall not be necessary for the executor or administrator to give any notice of the hearing of any report prior to the final report, except as in Section 1434 provided (Section 1434 provides for personal service after a written request filed in the proceeding) but the court may require notice of the hearing of any such report. If the court does not require such notice to be given, then at any time after ten days following the filing of any report, other than the final report, the court may hear and settle such report." (Note: parenthesis ours.)

The following Washington cases apply:

In re *Lassin's Estate*, 33 Wn. (2d) 163, 204 P. (2d) 1071, 17 Am. Jur. 590.

In re *Baker's Estate*, 27 Wn. (2d) 933-937, 181 P. (2d) 826. In this case in discussing the requirements

of the Washington probate statute the court said:

> "Under our probate law, appellants were entitled to certain notice in probate proceedings, which was the posting and publication provided for by statute. This was given properly, and the appellants were entitled to no further notice."

There are in the various unverified objections made in open court by petitioner while not under oath, charges of fraud, but there is no proof of any kind in the record showing any fraud.

Re *Doane's Estate*, 64 Wash. 303, 116 Pac. 849. The court, in this case, said:

> "A decree settling a final account of an executor or an administrator when rendered upon due statutory notice, as this decree was so rendered, has all of the force, effect and finality of any other final judgment rendered by a superior court. This is not only evident from the very nature of the statutory notice and procedure provided for and leading up to the rendition of such decree, but seemingly for the purpose of removing all doubt upon the question and putting probate decrees of this nature upon the same firm basis as to their finality as all other final judgments are."

## AS TO JURISDICTION

Section 1371, Rem. Rev. Stat. of Washington provides:

> "The superior courts in the exercise of their jurisdiction of matters of probate shall have power to probate or refuse to probate wills, appoint administrators, executors and guardians of insane and incompetent persons and minors, and administer and settle all such estates, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction."

Article IV, paragraph 1 of Washington State Constitution provides:

> "The judicial power of the state shall be vested in the Supreme Court, Superior Courts, justices of the peace and such inferior courts as the legislature may provide."

Section 6 of the same Constitutional Article provides:

> "The Superior Court shall have original jurisdiction * * * of all matters of probate."

*Filley v. Murphy*, 30 Wash. 1, 70 Pac. 107. In this case our court said:

> "In this state we have no probate court, properly speaking, as distinguished from the court that entertains jurisdiction of other matters. The

court of general jurisdiction also hears and determines probate matters. Matters pertaining to probate are referred to what is called 'probate procedure', as distinguished from what is denominated 'civil' or 'criminal procedure'."

*Bayer v. Bayer,* 83 Wash. 430, 145 Pac. 433. In this case our court said:

"Under the Constitution, the Superior Court is a court of general jurisdiction. It has jurisdiction of equity cases, actions at law and proceedings in probate * * * The Constitution does not make the Superior Courts probate courts. On the contrary, it makes them courts of general jurisdiction including 'all matters of probate'."

*Tucker v. Brown,* 20 Wn. (2d) 740-802, 150 P. (2d) 604 provides:

"This court has in some thirty-seven cases passed upon questions involving the jurisdiction of superior courts sitting in probate.

These thirty-seven cases are then set out.

*State Ex Rel Brisbin v. Frater,* 1 Wn. (2d) 13, 95 P. (2d) 27. This case, an en banc decision, supports our contention in the following language:

"There are two well recognized prerequisites to the jurisdiction of a court to issue letters testamentary or of administration. The first, of course, is the death of the person on whose estate letters are to be granted. The second is an alternative: (a) The person must at the time of death reside within the territorial jurisdic-

tion of the court or (b) leave property therein upon which administration may be had."

Citing numerous authorities.

*Farley v. Davis,* 10 Wn. (2d) 62, 116 P. (2d) 263. Our court, in dealing with almost the exact question, stated:

> "It is settled law in this state that orders and decrees of distribution made by superior courts in probate proceedings upon due notice as provided by statute are final adjudications having the effect of judgments in rem, and are conclusive and binding upon all persons having any interest in the estate and upon all the world as well."

This case cites numerous authorities.

Section 1504, Rem. Rev. Stat. of Washington provides:

> "No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and orders of the court with reference to such sale have been complied with."

**AS TO PETITIONER'S APPEARANCE IN COURT**

The petitioner, at the time she objected to the final account, entered her general appearance in the Superior Court of Clark County, Washington. This constitutes the submission of herself personally to this jurisdiction.

In re *Brown's Estate*, 129 Wash. 84, 224 Pac. 678, the court said:

> "As to jurisdiction of the person, the record has abundant proof that in the proceedings she has appeared generally, including the final hearing and in a number of other instances has so appeared and received the benefits of orders in her favor."

A person cannot appear generally and object to the jurisdiction, for lack of personal service on them. Their general appearance in a court of general jurisdiction gives the court as to them jurisdiction of the person.

The order admitting the will and confirming the appointment of the executor found that the executor was qualified to carry on trust business in Washington. Therefore, the corporation was personally present. The petitioner, having appeared generally, could have prosecuted any rights she had against the executor. The limited record that she made in court should not be the misfortune of the respondent. She cannot now complain that she was deprived of any constitutional rights.

**AS TO THE ADJUDICATION BY THE OREGON CASE**

In the answer to the objections filed by the respondent there was set up by title the case of Portland Trust and Savings Bank v. Gallin, et al, in the Supreme Court of the State of Oregon, decided April 11, 1950, 116 P. (2d) 681. It was claimed in the answer that this case adjudicated many of the things set forth by petitioner in her various objections. Petitioner appeared personally in that case and was the appellant to the Supreme Court of Oregon. Our court takes judicial knowledge of this case. We quote from this case as follows:

> "The present instance involves an accounting it is true, but the trustee has shown by mathematical calculation how it determined the amount it tendered to the appellant as her distributive share. The character of the computation and the tender of the money distinguishes, in part, this case from those we have just reviewed. The accuracy of the computation — assuming that all parties were taken into consideration—is not questioned. The amount tendered—unconditionally tendered—is $1491.41."

This case involved a question of accounting between the petitioner and the Portland Trust and Savings Bank and is a bar to the opening of any controversy concerning accounting happening prior to the date of this case.

We submit the petition for certiorari should be dismissed for the following reasons:

1. An administration of a decedent's estate in the State of Washington is a proceeding in rem.

2. Such proceedings do not involve the personal rights of heirs except to have a fair administration and no fraud perpetrated in the administration. Such a question is not present as shown by the record.

3. The final decree of distribution determining the fairness of the administration on a hearing for final accounting and distribution is a final judgment. An appeal and confirmation by the Supreme Court of the State of Washington constitutes a final determination.

4. The writ for certiorari should be denied for the reason that neither statute of the United States is drawn in question nor the validity of any state statute is drawn in question as provided by Section 1257 Fed. Code Ann.

5. An objection in the state court that merely challenged the power of the court to proceed to a decision did not draw into question the validity of any authority exercised by the state court.

6. For the reason the Oregon case cited herein between the same parties has already adjudicated all of the trust matters excepting the amount of approximately

$287.82, being items accruing in the trust subsequent to the Oregon case.

Respectfully submitted,

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Docket No. 605

## REPLY TO RESPONDENT'S ANSWER TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

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Docket No. 605

## REPLY TO RESPONDENT'S ANSWER TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

Respondent's answer to the petition for writ of certiorari herein is for the most part irrelevant in that it attempts to refute a contention not made by petitioner, namely, that the proceedings of the Superior Court of Clark County, Washington, were ineffective because there was no personal service upon the petitioner.

Petitioner's position is not based upon the fact that there was inadequate service upon her. It is rather that

she was deprived of her rights to due process of law under the 14th Amendment by reason of the fact that the Superior Court of Clark County, Washington, conducted probate proceedings, entertained therein an accounting of trust properties and assets located and theretofore being administered upon in the State of Oregon, and issued a decree of distribution, all in an estate of which petitioner was beneficiary, over her objections that the court had no jurisdiction because neither domicile nor property of the defendant was located in Clark County, Washington.

It appears to be further the contention of respondent in its answer that the petitioner is precluded from questioning the validity of the decree of distribution issued by said Clark County Superior Court because such a decree is a final judgment, concluding all rights in the property of which disposition is made by the decree.

The answer to that contention is found in the rule that "a fundamental principle of procedure recognized and applied by courts in every country where judgments are rendered only upon notice and inquiry as distinguished from those countries where a dictator's will is the law, is that a judgment rendered by a court without jurisdiction is not a final and binding judgment." *In re Waters Estate,* 153 S.W. (2d) 774; *Parr v. City of Seattle,* 197 Wash. 53, 84 P. (2d) 375; *United Production Corp v. Hughes,* 152 S.W. (2d) 327; *In re Hanrahan's Will,* 109 Vt. 108, 194 At. 471.

Respondent contends also that the petition should be dismissed for the reason that neither a statute of the United States nor the validity of any state statute is drawn in question as provided by Section 1257 Fed. Code Ann.

Respondent has overlooked that part of said Section 1257 which reads: " * * * or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * * ."

As pointed out in the petition herein, the assumption of jurisdiction by a court where no basis therefor exists is a denial of due process and a violation of petitioner's rights under the 14th Amendment of the Constitution of the United States.

The assumption of jurisdiction by a court of probate without the meeting of the basic jurisdictional requirements is a denial of due process as is made clear by *Scott v. McNeal*, 154 U.S. 46, 37 L. Ed. 896.

Respondent apparently in its answer also asserts that the objection of petitioner in the Superior Court for Clark County, which challenged the power of the court to proceed to a decision, did not draw into question the validity of any authority exercised by the state court. It is, of course, axiomatic that a challenge to the jurisdiction of a court such as was made by petitioner in the case at bar, brings into question the validity of any act done under an improper assumption of jurisdiction.

Respondent further states in its answer that the case of *Portland Trust and Savings Bank v. Gallin, et al.*, decided by the Supreme Court of Oregon, is a bar to the opening of any controversy concerning an accounting prior to the date of that case. The said case has no bearing upon the issue of improper assumption of jurisdiction as a denial of due process as raised by this petitioner.

Respondent, having argued that the courts of the State of Oregon had jurisdiction of the trust being administered by the respondent in Oregon, cannot now consistently say under any theory whatsoever that the respondent could lawfully and properly make an accounting of such trust in a probate proceeding carried on in the Superior Court for Clark County, Washington, where no jurisdiction existed in said court over such probate proceedings.

## CONCLUSION

Petitioner believes therefore that the answer of the respondent fails to disclose any reason why this court should not now issue a writ of certiorari herein as prayed for by petitioner.

*Respectfully submitted,*

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